

1
2
3
4
5 **UNITED STATES DISTRICT COURT**
6 **EASTERN DISTRICT OF WASHINGTON**

7 **LAKESIDE ISC, L.L.C. a**
8 **Washington Limited Liability**
9 **Company,**

10 Plaintiff,

11 v.

12 **LAKESIDE TECHNOLOGIES,**
13 **L.L.C., a Washington Limited**
14 **Liability Company; LAKESIDE**
15 **CAPITAL GROUP, L.L.C., a**
16 **Washington Limited Liability**
17 **Company; BORIS KERBIKOV, an**
18 **individual, CARY GOUGE, an**
19 **individual; RICHARD BARTLETT,**
20 **an individual; and JOHN**
21 **HEMMINGSON, an individual,**

22 Defendants.

23 NO. CV-07-26-RHW

24 **ORDER GRANTING**
25 **DEFENDANTS' MOTION TO**
26 **STAY; MOTION FOR**
27 **PROTECTIVE ORDER**

28 Before the Court are Defendants' Motion to Stay (Ct. Rec. 26) and
1 Defendants' Motion for Protective Order (Ct. Rec. 37). On March 5, 2007, a
2 telephonic hearing on Defendant's Motion for Protective Order was held on an
3 expedited basis. Plaintiff was represented by Paul Brown and Mark Bailey.
4 Defendants, other than Defendant Cary Gouge, were represented by Michael
5 Wolfe.

6 Defendants seek to stay the above-captioned proceedings until the issues can
7 be resolved through arbitration.¹ Plaintiff does not object to a stay of the
8 proceedings, but asks the Court to retain jurisdiction to administer and enforce

9
10 ¹Defendants noted the hearing on the Motion to Stay for March 12, 2007.

1 discovery against third-parties. Plaintiff has issued third-party *subpoena duces*
 2 *tecum*. In response, Defendants filed a Motion for Protective Order, and noted the
 3 hearing on an expedited basis. Because the Court has been briefed on Defendants'
 4 Motion to Stay, and because the Motion for Protective Order would be moot if the
 5 Court grants Defendants' Motion to Stay, it is not necessary to wait until March
 6 12, 2007, to hear the motion.

7 Pursuant to 9 U.S.C. § 3, if arbitration can resolve the pending issues that are
 8 before the federal district court, the court shall stay the trial of the action until
 9 arbitration has been made in accordance with the terms of the arbitration
 10 agreement. Federal courts recognize strong policy in favor of arbitration. *Simula,*
 11 *Inc. v. Autoliv, Inc.*, 175 F.3d 716, 719 (9th Cir. 1999). In this case, the issue is not
 12 necessarily whether the Court should stay the proceedings, but the scope and extent
 13 of the stay. Plaintiffs argue that the Court should grant the stay but retain
 14 jurisdiction over third-party discovery.

15 Courts that have addressed this issue have overwhelmingly declined to
 16 exercise jurisdiction to permit discovery in a stayed proceeding pending
 17 arbitration. *Corpman v. Prudential-Bache Securities, Inc.*, 907 F.2d 29 (3rd Cir.
 18 1990) (“Where an action has been stayed pending arbitration, a district court may
 19 not permit the parties to conduct discover under the Federal Rules of Civil
 20 Procedure.”); *Suarez-Valdez v. Shearson Lehman/American Express, Inc.*, 858 F.2d
 21 648, 649 (11th Cir. 1988) (“An agreement to arbitrate is an agreement to proceed
 22 under arbitration and not under court rules.”). In doing so, some courts have
 23 recognized an “extraordinary circumstance” exception to this general rule.
 24 *Deiulemar Compagnia Di Navigazione v. M/V Allegra*, 198 F.3d 473, 479 (4th Cir.
 25 1999); *In re Deiulemar Di Navigazione*, 153 F.R.D. 592, 593 (E.D.La.1994)
 26 (permitting Rule 27 perpetuation of evidence); *Oriental Commercial & Shipping*
 27 *Co. v. Rosseel*, 125 F.R.D. 398, 400 (S.D.N.Y.1989) (“[D]iscovery ‘in aid of
 28 arbitration’ is permitted by the courts where a movant can demonstrate

1 ‘extraordinary circumstances.’ ”); *Ferro Union Corp. v. S.S. Ionic Coast*, 43 F.R.D.
 2 11, 14 (S.D.Tex.1967) (permitting discovery under Rule 34 where evidence was
 3 located on a ship that was about to leave United States waters). Limited discovery
 4 is inherent in arbitration, however, and courts have held that this is not a basis for
 5 circumventing the arbitration agreement. *See Gilmer v. Interstate/Johnson Lane*
 6 *Corp.*, 500 U.S. 20, 30 (1991) (“Although those procedures might not be extensive
 7 as in the federal courts, by agreeing to arbitrate, a party ‘trades the procedures and
 8 opportunity for review of the courtroom for the simplicity, informality, and
 9 expedition of arbitration.’”); *Kristian v. Comcast Corp.*, 446 F.3d 25, 42-43 (1st
 10 Cir. 2006).

11 Plaintiff argues that extraordinary circumstances are present in this case
 12 because this case involves internet commerce, web sites, and the need to conduct
 13 third-party discovery. The Court does not agree and declines to retain jurisdiction
 14 over these proceedings in order to monitor third party discovery. Implicit in the
 15 decision to retain jurisdiction over these proceedings would be the decision that
 16 third-party discovery is necessary to the arbitration proceedings. Whether the
 17 subpoenas would be necessary to effectuate arbitration is a decision left to the
 18 arbitrator, not this Court. Moreover, Plaintiff has not shown any special need or
 19 hardship. In agreeing to resolve any dispute regarding the settlement agreement
 20 through arbitration, Plaintiff agreed to the limited discovery that is inherent to
 21 arbitration. The Court will not circumvent that agreement by retaining jurisdiction
 22 over third-party discovery that is directly related to the issues before the arbitrator.

23 Accordingly, **IT IS HEREBY ORDERED:**

- 24 1. Defendants’ Motion to Stay (Ct. Rec. 26) is **GRANTED**.
- 25 2. Defendants’ Motion for Protective Order (Ct. Rec. 37) is **GRANTED**.
- 26 3. Defendants’ Motion for Order Shortening Time (Ct. Rec. 41) is

27 **GRANTED.**

- 28 4. The above-captioned case is **STAYED** until further notice by the Court.

**ORDER GRANTING DEFENDANTS’ MOTION TO STAY; MOTION FOR
 PROTECTIVE ORDER ~ 3**

1 5. Within 10 days from the conclusion of the arbitration proceedings, the
 2 parties shall notify the Court of the status of this case.

3 6. The Court **quashes** the following subpoenas that have been issued by
 4 Plaintiff in this case:

Party	Date subpoena was issued
Choquette Law Seattle, WA	February 16, 2007
Mylawyer.com Owing Mills, MD	February 16, 2007
Google, Inc. Mountain View, CA	February 16, 2007
Washington Divorce Online Kent, WA	February 22, 2007
Data Pipe.net Hoboken, NJ	February 22, 2007
1 & 1 Internet, Inc. Chesterbrook, PA	February 22, 2007
Godaddy.com Scottsdale, AZ	February 22, 2007
Client Intellect, Inc. Orlando, FL	February 22, 2007
Network Solutions Herndon, VA	February 22, 2007

19 7. Plaintiff's *ex parte* Motion for Leave to File Overlength Brief (Ct. Rec.
 20 7) is **GRANTED**.

21 8. Defendant's Motion for Leave to File Excess Pages (Ct. Rec. 13) is
 22 **GRANTED**.

23 ///

24 ///

25 ///

26 ///

27 ///

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward copies to counsel.

DATED this 7th day of March, 2007.

S/ Robert H. Whaley

ROBERT H. WHALEY
Chief United States District Judge

Q:\CIVIL\2007\Lakeside ISC\stay.wpd

**ORDER GRANTING DEFENDANTS' MOTION TO STAY; MOTION FOR
PROTECTIVE ORDER ~ 5**